

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

CLAUDIO A.H. VEIGA,
Appellant,

v.

C-15-144

**EXECUTIVE OFFICE OF LABOR AND
WORKFORCE DEVELOPMENT,
DEPARTMENT OF UNEMPLOYMENT
ASSISTANCE,**
Respondent,

Appearance for Appellant:

Claudio A.H. Veiga

Appearance for Respondents:

Suzanne Quersher, Esq.
Executive Officer of Labor and
Workplace Development
19 Staniford Street
Boston, MA 02114

Commissioner:

Paul M. Stein¹

DECISION

On July 13, 2015, the Appellant, Claudio A.H. Veiga (Mr. Veiga or Appellant), pursuant to G.L. c. 30, § 49, filed a timely appeal with the Civil Service Commission (Commission), contesting the decision of the state's Executive Office of Labor and Workplace Development (EOLWD), Department of Unemployment Assistance (DUA) to deny his request for reclassification from the position of Accountant II to the position of Accountant III. A pre-hearing was held on August 4, 2015 at the offices of the Commission. A full hearing was held at the same location on September 4, 2015.² Witnesses were not sequestered. The hearing was

¹ The Commission acknowledges the assistance of Law Clerk Barbara Grzonka in the drafting of this decision.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

digitally recorded and both parties were provided with a CD of the hearing³.

FINDINGS OF FACT:

Thirty (30) exhibits were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

Called by the Respondent:

- Basir Khalifa, Manager, Employer Reports, Department of Unemployment Assistance, EOLWD
- Tina Fontaine, Personnel Officer II, Human Resources Department, EOLWD

Called by the Appellant:

- Claudio A.H. Veiga, Appellant
- John A. Zeletsky, Supervisor, Employer Reports Unit, Department of Unemployment Assistance, EOLWD

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations, policies, and reasonable inferences from the credible evidence; a preponderance of credible evidence establishes the following facts:

1. Mr. Veiga was hired by the Commonwealth in 2006. (Exhibit 9) Mr. Veiga is currently employed as an Accountant II in the Department of Unemployment Assistance (DUA). DUA is within the state's Executive Office of Labor and Workplace Development (EOLWD). (Exhibits 6, 9)
2. Within DUA, Mr. Veiga works in the Revenue Services Department which deals with employer unemployment insurance contributions. (Exhibit 6, Testimony of Mr. Zeletsky)

³ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

3. Mr. Veiga's main duties include answering a phone queue with five (5) different lines which process inquiries regarding wage processing, revenue adjustments, rate setting, employer liability and collections. Mr. Veiga can process wage adjustments, review and approve adjustments made by clients, process and receive payments, adjust payment application and process unmatched payments, manually assign rates and determine liability, review and explain rate calculations and review and assist with voluntary contributions. (Testimony of Mr. Veiga)
4. The other employees classified as Accountant II in Mr. Veiga's group are also responsible for answering the five (5) line phone queue and are expected to provide customer assistance to the callers and resolve the callers' issues. If an employee cannot resolve the issue, he may transfer the call to a supervisor. (Testimony of Mr. Khalifa)
5. The subject matter of the calls can range from a password reset to reconciling a caller's account in order to determine an outstanding balance or to determine how credits were applied. (Testimony of Mr. Khalifa)
6. Since 2009, the Accountant II position has required more account reconciliation because most of the callers' account information is in a computer database which requires analyzing multiple screens in order to answer a caller's questions. (Testimony of Mr. Zeletsky)
7. Mr. Veiga's other duties include maintaining a database that tracks the volume of calls coming into the department and being a back-up for the remote deposit system (RDS) when a supervisor is out of the office. (Testimony of Mr. Veiga, Exhibit 7)
8. There are two (2) additional Accountant II employees within the group who are back-ups for RDS. (Testimony of Mr. Khalifa)

9. Within Mr. Veiga's group, there is an Accountant III who performs similar functions as Mr. Veiga. (Exhibit 6, Testimony of Mr. Veiga)
10. An employee who is underperforming for his classification will have a "class flag" attached to the position by EOLWD Human Resources. When the employee vacates the position it will be "back filled" by someone with a lower classification. In Mr. Veiga's group, that Accountant III position will be filled by an Accountant II. (Testimony of Ms. Fontaine)
11. On October 10, 2012, Mr. Veiga appealed his current classification position with the Human Resources Department of EOLWD. (Exhibit 1)
12. The review process for a reclassification request proceeds as follows: an employee fills out the reclassification request, an interview is scheduled between the employee and and EOLWD human resources personnel officer, the personnel officer reviews the job specifications of the employee's current position and the higher position requested and determines which position is the appropriate classification. The Human Resources Director reviews the personnel officer's recommendation. (Testimony of Ms. Fontaine)
13. On June 7, 2013, EOLWD denied Mr. Veiga's appeal. (Exhibit 2)
14. The reasons EOLWD gave for denying the reclassification request were that ". . .[t]he duties of the position, which you were performing at that time, are not adequately described by the classification specification of Accountant III (E1 0R01). Rather, we find that your position is properly classified as Accountant II (E08R01)." (Exhibit 2)
15. On September 15, 2014, Mr. Veiga appealed his reclassification denial to the state's Human Resources Division (HRD). In his appeal request, Mr. Veiga claimed, in party:
 - "The HR/EOWLD evaluation and decision was superficial and, was based solely on the Appeal paperwork I prepared with general contents about the duties and on

a document (Form 30) with job descriptions which I believe do not reflect correctly the duties I perform. “

- At no point did HR/EOLWD’s classification specialist sit with me to observe any of the functions I perform in my position to facilitate a fair assessment of my responsibilities.”

(Exhibit 3)

16. Mr. Veiga’s 2011 Form 30⁴ which was used in his initial reclassification appeal lists the following items under “General Statement of Duties and Responsibilities”:

“Using standardized procedures, incumbent examines and verifies electronic tax filings as recorded on agency’s computerized tax data base, QUEST; examines accounting data to reconcile posting errors; serves as problem resolution specialist for DUA tax filers by communicating orals and in writing; produces spreadsheets and related reports as requested; analyzes procedural issues and reports findings in “Incident Reports”

(Exhibit 8)

17. Mr. Veiga’s 2013 Form 30 also lists the following items under “General Statement of Duties and Responsibilities”:

- “1. Research and reconcile complex accounting discrepancies on UI tax accounts
2. Provide quality tax filing instruction by interpreting/explaining UI tax filing laws in English, in addition to Spanish, Portuguese or French and by providing navigational instruction for UI Online tax system
3. Process taxpayer remittances and post to business accounts
4. Back up operator of direct Remote Deposit system with agency’s banking vendor
5. Produce case analysis and accounting reports as assigned
6. Utilize advanced computer skills, to design, deploy and maintain telephone call tracking system used by Revenue Customer Service Team.”

(Exhibit 10A)

⁴ A Form 30 is a written description of the duties, responsibilities and qualifications required of an individual position. This differs from the state’s Class (Job) Specifications, which are written in a more general form and are intended to describe all of the positions in a given title. Positions are classified, or assigned, to a particular title, by comparing the concepts of the Form 30 to various Class Specifications to determine the best “fit”. Form 30’s are tools for supervisors to use on a regular basis to communicate with employees the requirements of their individual jobs. The Form 30 is also a source of information on the most important job duties required of a position. Guidelines for Completing Position Descriptions (Form 30), <http://www.mass.gov/anf/docs/hrd/policies/files/pol-eprs-frm30guide.doc>.

18. Mr. Veiga's Employee Performance Review Form (EPRF) for the period of July 1, 2012 to June 30, 2013 indicates Mr. Veiga's overall rating is "Excels" and his supervisor's comments include the following:

"He regularly serves as a technician for the Remote Deposit System in the absence of the Program Coordinator 1 who normally handles this function."

"Claudio also merits kudos for conscientiously maintaining the telephone queue database on a monthly schedule. This resource enables the unit supervisor to interpret call trends and recognize the contributions of each team member."

"Claudio continues to be the "go-to" person within the team for resolving complex accounting discrepancies..."

(Exhibit 7)

19. On October 15, 2014, HRD denied Mr. Veiga's reclassification appeal. HRD's denial letter states: "After review of the appeal documentation, we find the classification of Accountant II covers the duties being performed by you." (Exhibit #4)

20. On July 13, 2015, Mr. Veiga filed an appeal with the Civil Service Commission. (Stipulated Fact)

21. The Job Title and Summary of Series for an Accountant II lists the following characteristics in pertinent part:

Minimum Entrance Requirements:

Applicants must have at least (A) two years of full-time, or equivalent part-time, professional experience in accounting or auditing, or (B) an equivalent combination of the required experience and the substitutions below.

Substitution:

- I. An Associate's degree with a major in accounting, business administration or business management may be substituted for the required experience
- II. A Bachelor's or higher degree with a major in accounting, business administration or business management may be substituted for the required experience

Incumbents of positions at this level or higher also:

1. Interpret state and federal laws, regulations, guidelines and procedures for financial operations and accounting systems.
2. Confer with suppliers of goods and or/providers of services and [t]heir employees to explain state/agency rules, policies, and accounting procedures governing payment and related financial transactions.
3. Compute amount of surplus funds to be returned to state and/or federal agencies.

Based on assignment, incumbents of positions at this level of higher may also:

1. Assign point value to specific services such as laboratory tests, X-ray, etc. for use in rating setting.
2. Determine scope and format for examination of books of account and/or program of federal, state or other Massachusetts political subdivisions and/or agency grantees.
3. Review policies and procedures of financial institutions and/or political subdivisions to ensure their adherence to applicable laws, rules and regulations.

Supervision Exercised:

Incumbents of positions at this level exercise direct supervision (i.e. not through an intermediate level supervisor) over, assign work to, and review the performance of 1-5 professional, technical and/or clerical personnel.

(Exhibit 5)

22. An Accountant II is the first level supervisory job in the series. (Exhibit 5)
23. An Accountant III is the second-level supervisory job in the series. (Exhibit 5)
24. Mr. Veiga's Form 30 lists no one reporting to him either directly or indirectly (Exhibit 8, Exhibit 10A, 10B)
25. The Job Title and Summary of Series for an Accountant III list the following characteristics in pertinent part:

Minimum Entrance Requirements:

Applicants must have at least (A) three years of full-time, or equivalent part-time, professional experience in accounting or auditing, of which at least (B) one year must have been in a supervisory, administrative or managerial capacity, or (C) any equivalent combination of the required experience and the substitutions below:

Substitutions:

- I. An Associate's degree with a major in accounting, business administration or business management may be substituted for a maximum of one year of the required (A) experience.
- II. A Bachelor's degree with a major in accounting, business administration or business management may be substituted for a maximum of two years of the required (A) experience.
- III. A Graduate degree with a major in accounting, business administration or business management may be substituted for the required experience.

Incumbents of positions at this level or higher also:

1. Review accounting procedures, reports, etc. for accuracy, updating and corrections and for recommending changes or improvements in agency accounting procedures or operations.

2. Review financial reports for trends in major programs to determine their effect on spending.

Based on assignment, incumbents of positions at this level or higher may also:

1. Review property tax rates of municipalities, checking assessor's records as necessary in order to ensure that such rates were computed properly.
2. Prepare and verify county budgets for legislative approval based on estimates submitted by county commissioner.
3. Make recommendations for certification of County Treasurers' records.
4. Examine contract awards and agreement investment procedures, etc. for compliance with agency laws, rules and regulations.
5. Evaluate requests for additional allotments and/or transfer of funds.

Supervision Exercised:

Incumbents of positions at this level exercise direct supervision (i.e. not through an intermediate level supervisor) over, assign work to, and review the performance of 1-5 professional, technical and/or clerical personnel; and indirect supervision (i.e. through an intermediate level supervisor) over 6-15 professional, technical and/or clerical personnel.

(Exhibit 5)

30. Some of the duties of a direct supervisor include approving time sheets, signing Forms 30, approving time off and signing employees' reviews. (Testimony of Ms. Fontaine)
26. At the hearing, Mr. Veiga claimed that a "desk audit" would have shown that he does, in fact, perform at an Accountant III level. A desk audit involves the personnel officer observing the employee at his desk performing his duties. (Testimony of Mr. Veiga; Ms. Fontaine)
27. A desk audit is not routinely part of the reclassification review process and it was not performed in Mr. Veiga's case because it was not considered necessary. (Testimony of Ms. Fontaine)⁵

Legal Standard

Pursuant to M.G.L. c. 30 § 49, the Civil Service Commission is charged with hearing the appeal of an employee aggrieved by a classification decision of a personnel administrator regarding "any provision of the classification affecting his office or position."

⁵ According to the page on HRD's official website "Required Documents for Classification Appeals", a desk audit is not one of the requirements listed. See <http://www.mass.gov/anf/hearings-and-appeals/civil-service-appeals-proces/filing-your-appeal/required-documents-for-classification-appeals.html>

“The determining factor of a reclassification is the distribution of time that an individual spends performing the function of a job classification.” Roscoe v. Department of Environmental Protection, 15 MCSR 47 (2002). In order to justify a reclassification, an employee must establish that he is performing duties encompassed within the higher level position the majority of the time. *See, e.g.* Pellegrino v. Department of State Police, 18 MCSR 261 (2005); Morawski v. Department of Revenue, 14 MCSR 188 (2001); Madison v. Department of Public Health, 12 MCSR 49 (1999); Kennedy v. Holyoke Community College, 11 MCSR 302 (1998).

Parties' Positions

Mr. Veiga argues that the majority of the duties that he performs fall within the Accountant III position because he has to resolve customer inquiries that can sometimes become complex without the assistance of a supervisor. Mr. Veiga believes that because he has access to certain systems and the ability to make changes in those systems as part of reconciling an account, and because he is occasionally called up to make deposits using the RDS system, he is performing the functions of an Accountant III. Mr. Veiga argues that the 2011 Form 30 used in his reclassification appeal did not accurately represent his duties and the only way to get an accurate representation would be for the personnel analyst to perform a desk audit. Additionally, Mr. Veiga is aware that he does not directly or indirectly supervise any employees within his group but he points out that at the time of his reclassification appeal there was another Accountant III in his group that did not supervise.

EOLWD acknowledges that Mr. Veiga is a conscientious employee and appreciates his hard work. However, EOLWD argues that Mr. Veiga is properly classified as an Accountant II because he does not supervise others and his job duties are either common to all levels of the series or similar to those of the Accountant II employees in Mr. Veiga's department.

Additionally, desk audits are not necessary in a reclassification review and having a co-worker who is classified in a higher position than what the job requires in Mr. Veiga's group, does not justify reclassifying him to a higher position.

Analysis

EOLWD has established by a preponderance of the evidence that Mr. Veiga is properly classified in his current position, Accountant II. In order for an Appellant to prevail in a reclassification appeal he must show that he is performing job duties within the higher level position more than fifty percent of the time. Mr. Veiga has been unable to meet this burden.

One of the key components of an Accountant III position is that individual's supervisory role. An Accountant III must supervise at minimum one (1) to five (5) employees, and could have up to fifteen (15) indirect reports. Mr. Veiga does not have anyone reporting directly or indirectly to him. The only management function that Mr. Veiga may perform is to be a back up to the RDS deposit. The majority of Mr. Veiga's time is not spent completing this task. Additionally, the fact that a co-worker in Mr. Veiga's department was classified as Accountant III and did not supervise anyone is not a justifiable reason for reclassification. As Ms. Fountaine indicated, that position will be "back-filled" or downgraded to an Accountant II once it is vacated.

When comparing Mr. Viega's key jobs duties to the descriptions of both an Accountant II and III, his responsibilities fall within the Accountant II job description. This analysis for the Commission is the same whether it relies on Mr. Veiga's 2011 Form 30 or his 2013 Form 30. The 2013 Form 30 does provide a more detailed and organized description of duties. However Mr. Veiga's duties on both forms are categorically similar and consistent with the job series requirements for an Accountant II, who must "interpret state and federal law, regulations,

guidelines and procedures for financial operations and accounting systems” and “confer with suppliers of goods and or/providers of services and [t]heir employees to explain state/agency rules, policies, and accounting procedures governing payment and related financial transactions.” These duties are what make up Mr. Veiga’s work. Although he may be required to look through several screens of a caller’s account to obtain information necessary to answer a question that does not rise to the level of review required by an Accountant III position. The applicable job series requirements for an Accountant III include review of accounting procedures and reports for accuracy, recommend changes or improvements in agency accounting procedures or operations, and review financial reports for trends in major programs to determine their effect on spending. These tasks are part of a higher function than Mr. Veiga performs because they involve department wide oversight and review and not just a review of a caller’s account. Mr. Khalifa’s and Mr. Zeletsky’s testimonies further support the Respondent’s position that Mr. Veiga is properly classified as Accountant II. Mr. Veiga answers the same type of calls as other Accountant II employees within his group, and Mr. Veiga’s review of a caller’s account is the same type done by other Accountant II employees in his group.

Mr. Zeletsky’s testimony provided some insight into how Mr. Veiga’s position has evolved over time because of computer system upgrades and merging of departments. These changes have led to Mr. Veiga and his coworkers having the ability to conduct more in depth analysis of customer accounts if necessary to resolve a customer call. These additional responsibilities are not those of an Accountant III because Mr. Veiga is not required to engage in a macro management analysis of workflow trends in order to determine how to allocate resources.

Moreover, the preponderance of the evidence established that Mr. Veiga's duties do not require that he manages or supervises at the higher organizational level required for an Accountant III, and certainly did not perform at that level more than 50% of his time. A desk audit by EOLWD, although it might have confirmed Mr. Veiga's skill and dedication in troubleshooting and processing the work he is assigned to perform, it would have added no new material facts that could have changed the perception that he was properly classified as a hard-working Accountant II and was not performing at the higher organizational level required to be reclassified as an Accountant III.

To be sure, the unfairness that is presented by Appellant's situation has not been overlooked. The Commission does not discount the inequity that arises when one hard-working civil servant is called upon to learn new tasks as the job duties become increasingly complex, but that does not authorize the Commission to order a reclassification that has not been justified under the well-established standards for granting such relief.

Conclusion

Accordingly, for the above stated reasons, Claudio A.H. Veiga's appeal, filed under Docket No. C-15-144 is hereby *denied*.

Civil Service Commission

 /s/ Paul M. Stein
Paul M. Stein, Commissioner

By 4-1 vote of the Civil Service Commission (Bowman ,Chairman [YES]; Camuso [YES], Ittleman, [YES], Stein [YES] and Tivnan [NO], Commissioners) on December 10, 2015

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of

this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice:

Claudio A.H. Veiga (Appellant)

Suzanna Quersher, Esq. (for Respondent)

John Marra (for HRD)